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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,953	12/12/2003	Larry D. Brown	HENTE-088A	1455
7663	7590	04/07/2006	EXAMINER	
STETINA BRUNDA GARRED & BRUCKER 75 ENTERPRISE, SUITE 250 ALISO VIEJO, CA 92656			LE, TAN	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/734,953	Applicant(s) BROWN ET AL.	
	Examiner Tan Le	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) 10-14, 21, 23, 34-50, 65 and 66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 15, 17-20, 22, 25-33, 51-64, 67 and 68 is/are rejected.
- 7) ☒ Claim(s) 7-9 and 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the second office action for Application serial number 10/734,953. This application contains 68 claims numbered 1-68. Claims 10-14, 21, 23, 34-50, 65-66 have been withdrawn. Claims 67-68 have been newly added which appear to be read on the elected species.
2. Applicant's affirmation of his election on May 24, 2005 is acknowledged.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2, 3, 5-6, 17-20, 22, 25-33, 51-62 and 67-68 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,126,122 to Ismert.

As to claims 1 and 2, Ismert teaches a clamp base 11 having a pair of ratchet arms 41, 42 extending outwardly from the base, each arm having a plurality of ratchet teeth, the clamp base having a first support including at least two inclined surfaces 22 forming a generally V-shaped, each of these inclined surface having a side; a clamping block (31 having openings (32, 42, 43) for the ratchet arms, the clamping block having a pawl located in each opening with at least one tooth; the clamping block having a second support including at least two inclined surfaces 22 forming a generally V-shaped notches that opens toward the clamp base; at least one flexible cap forming a curved surface in the notch (52) (Fig. 1) and held onto or secured to one of the first and second support and extending over the notches and over a portion of the side of the

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corresponding inclined surface forming the notch and being interposed between the inclined surface.

As to claim 3, Ismert also teaches a cap (52) on each of the clamp base and clamping block (see col. 4, line 67 and Col. 5, lines 4).

As to claims 5-6, Ismert further teaches the cap being a removable cap (an optional), and wherein the v-shaped notches each have opposing sides and ends and the cap is shaped to fit over the opposing sides and ends of one of the V-shaped notches, a first hole extending through the clamp base and located between the inclined surfaces of the base.

As to claims 17-19, at least one resilient leg (72) and a flange (64, 54) each extending from the base (Fig. 5); the flange and the arm being spaced apart at a distance sufficient to allow the leg to resiliently engage the support, wherein the flange is at right angles to the base and extending toward the arm with at least one hole in the flange (61, 56) (Fig. 5).

As to claims 20, the pawl also formed by two adjacent slots in a wall of the clamping block which wall defines a portion of the opening in which the pawl is located, the slots extending to an opening onto a distal edge of the clamping block opposite a base of the pawl.

As to claim 22, since the elongate member is not a positive part of the claim (see the preamble), the claim is therefore also read on Ismert. Note that it is also improper to use a dependent claim to expand the scope of the claim from a subcombination to combination.

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Claim 25, 26, 27, 28, 29, 30, 31-33 recited limitations similar to those recited in claims 1-3, 5-6, 17-20 and 22 are therefore also read on Ismert.

Claims 51-62 recited limitations which similar to those recited in claims 1-3, 5-6, 17-20 and 22 are therefore also read on Ismert, wherein the flange as recited in claims 51 and 55 extends outwardly and opposite the arms which still reads on Ismert (see 64, 54), claim 52 reads on element 72 (Fig. 5). Note: although the flange and the clamp base of Ismert they are not structurally integral but since they are rigidly secured and hence are integral in functional sense. Further note: the term integral is not necessary restricted to one-piece article. In re Kohno (CCPA) 157 USPQ 275. The term "integral" is sufficient broad to embrace constructions united by such means as fastening and welding. In re Hotte (CCPA) 177 USPQ 326.

Newly added claims 67 and 68 also broadly read on Ismert. Note: the claim is supposed to set forth what it does, not what it does not do (claim 67)

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 15 and 63-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ismert.

Ismert does not specifically express the hardness of the material of the cap to be 40-60 Shore A. However, it would have been considered an obvious matter of design choice to have provided the cap with the hardness degree of about 40-60 Shore A since the hardness of the material is depending on the hardness of the material from which the clamp is constructed and depending on how much to actually restrain the pipe when the ratchet arms are in place. These are considered to be unlimited. Therefore it considered as an obvious matter of design choice.

As to claims 15 and 63-64, Ismert also does not teach a rib on at least one ratchet arm extending substantial length of the arm to strengthen the arm. To have added a rib on the ratchet arm extending substantially the length of the arm to strengthen the arm of Ismert would have been obvious and well within the level of ordinary skill in the art since such structures are conventional alternative structures or depending on the material strength of the arm used in the same intended purpose which would allow sure, firm and/or rigid engagement with the clamping block, thereby providing structure as claimed.

Allowable Subject Matter

5. Claims 7-9, 16 and 24 are objected to, but would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed 01/03/06 have been fully considered but they are not persuasive.

Applicant argued that "no prior art cited for obviousness rejection...The Board cannot simply reach conclusions based on its own understanding or experience or on its assessment of what would be basic knowledge or common sense" (page 19 of the Remarks. This is not persuasive. Applicant appears to argue for the Board's position rather than his own position, which should point out the patentable novelty, which he or she thinks the claims present in view of the state of the art disclosed by the references cited or pointing out how the language of the claims patentably distinguishes them from the references. Note that there is no requirement that a motivation to make the modification be expressly articulated. There is also not necessary that a reference actually suggests changes, motivation or possible improvements, which Applicant made. In re Sheckler, 438 F.2d 999, 1001, 168 USPQ 716, 717 (CCPA 1971). And conclusion of obviousness can be "from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference". In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818. The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tan Le
March 27, 2006


ANITA KING
PRIMARY EXAMINER